

# Recusal

## (Disqualification of Judicial Authority)

*A Guide to Resources in the Law Library*

- “A judicial authority shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if such judicial authority is disqualified from acting therein pursuant to Canon 3 (c) of the Code of Judicial Conduct or because the judicial authority previously tried the same matter and a new trial was granted therein or because the judgment was reversed on appeal. A judicial authority may not preside at the hearing of any motion attacking the validity or sufficiency of any warrant the judicial authority issued nor may the judicial authority sit in appellate review of a judgment or order originally rendered by such authority.” CONN. PRACTICE BOOK § 1-22(a) (2004 ed.).
- “A judicial authority is not automatically disqualified from sitting on a proceeding merely because an attorney or party to the proceeding has filed a lawsuit against the judicial authority or filed a complaint against the judicial authority with the judicial review council. When the judicial authority has been made aware of the filing of such lawsuit or complaint, he or she shall so advise the attorneys and parties to the proceeding and either disqualify himself or herself from sitting on the proceeding, conduct a hearing on the disqualification issue before deciding whether to disqualify himself or herself or refer the disqualification issue to another judicial authority for a hearing and decision.” CONN. PRACTICE BOOK § 1-22(b) (2004 ed.).
- “[General Statutes of Connecticut] Section 51-39 disqualifies a judge both for relationship and for interest. If the judge comes within the statutory criteria, the disqualification is mandatory. The objective of the statute is to assure that the person who participates in any judicial proceeding in a judicial capacity is disinterested.” Dacey v. Connecticut Bar Assn., 184 Conn. 21, 26, 441 A.2d 49 (1981).
- “The defendant's claim of judicial bias must fail because he did not file a motion for disqualification in the trial court. We have repeatedly refused to consider claims of trial court bias in the absence of such a motion.” Bieluch v. Bieluch, 199 Conn. 550, 552-553, 509 A.2d 8 (1986).

### Sections in this chapter:

§ 1 MOTION FOR DISQUALIFICATION OF JUDICIAL AUTHORITY .....	2
§ 2 DISQUALIFICATION FOR BIAS OR PREJUDICE .....	9
§ 3 WAIVER OR REMITTAL OF DISQUALIFICATION .....	15

### Tables in this chapter:

Table 1 Rule of Necessity .....	7
Table 2 Statutory Disqualification .....	8
Table 3 ALR Annotations on Recusal .....	13
Table 4 Unreported Connecticut Decisions on Recusal .....	18

# Motion for Disqualification of Judicial Authority

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*A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to the motion for disqualification of judicial authority (recusal).
- SEE ALSO:**
- § 10.2. Disqualification for bias or prejudice
- DEFINITIONS:**
- “A motion to disqualify a judicial authority shall be in writing and shall be accompanied by an affidavit setting forth the facts relied upon to show the grounds for disqualification and a certificate of the counsel of record that the motion is made in good faith. The motion shall be filed no less than ten days before the time the case is called for trial or hearing, unless good cause is shown for failure to file within such time.” CONN. PRACTICE BOOK § 1-23 (2004 ed.).
- STATUTES:**
- CONN. GEN. STAT. (2003).  
Chapter 872. Judges  
§ 51-39. Disqualification by relationship or interest. Judge or family support magistrate may act with consent of parties  
Chapter 872a. Removal, suspension and censure of judges  
§ 51-51s. Disqualification of judge, compensation commissioner or family support magistrate  
Chapter 882. Superior Court  
§ 51-183. Substitute judge  
§ 51-183a. Judge’s inability to hold court  
§ 51-183c. Same judge not to preside at new trial  
§ 51-183d. Disqualified judge; Proceeding not void  
§ 51-183f. Expiration of term, disability retirement, death or resignation of judge  
§ 51-183g. Retiring judge; unfinished matters  
Chapter 902. Civil actions  
§ 52-268. New trial when judge, stenographer or court reporter dies or becomes incapacitated and review of errors not possible
- COURT RULES:**
- CONN. PRACTICE BOOK (2004 ed.).  
§ 1-22. Disqualification of judicial authority  
§ 1-23. Motion for disqualification of judicial authority
- CODE OF JUDICIAL CONDUCT:**
- CONN. PRACTICE BOOK (2004 ed.).  
Canon 3. A judge should perform the duties of judicial office impartially and diligently  
(c). Disqualification

### **FORMS:**

- 15 AMERICAN JURISPRUDENCE PL. & PRACT. *Judges* (1997).  
Disqualification and disability (§§ 3 to 67)
  - § 7. Motion—To disqualify judge—General form
  - § 17. Motion—To disqualify judge—Prejudice of judge and undue influence of adverse party
  - § 19. Motion—To disqualify judge—Dissolution of marriage
  - Motion—To disqualify judge—Bias in custody matter
  - § 34. Motion—Disqualification of judge—For interest
  - § 35. Affidavit—In support of motion to disqualify judge for interest—General form
  - § 46. Motion—To disqualify judge—Relationship to attorney
  - § 63. Affidavit—Affirming disability of judge and requesting designation of substitute judge
- 50 AM JUR PROOF OF FACTS 3d 449 (1999).
  - § 35. Sample letter to judge
  - § 38. Motion for disqualification for cause (mandatory grounds)
  - § 39. Motion for disqualification for cause (discretionary grounds)
- 8B AMERICAN JURISPRUDENCE PL. & PRACT. *Divorce and Separation* (1996).
  - § 451. Motion—Child custody—Disqualification of judge on grounds of bias

### **CASES:**

- Consiglio v. Consiglio, 48 Conn. App. 654, 661, 711 A.2d 765 (1998).  
“When the trial judge decided to recuse himself from all future matters involving Chiarelli, this should have ended any concern for either Chiarelli or the trial judge over his hearing of cases involving Chiarelli. It was inappropriate for the presiding judge to instruct the trial judge to hear this case. The presiding judge does not have the power to tell a trial judge when he or she may or may not recuse himself or herself. The matter of a judge's recusal is in the reasonable discretion of that judge, and is not to be overruled by a presiding judge. The decision to recuse oneself is an intrinsic part of the independence of a judge. Any attempt to instruct or order a judge to hear a matter after recusal, violates the independence of judges individually and the judiciary as a whole.”
- Bieluch v. Bieluch, 199 Conn. 550, 552-553, 509 A.2d 8 (1986). “The defendant's claim of judicial bias must fail because he did not file a motion for disqualification in the trial court. We have repeatedly refused to consider claims of trial court bias in the absence of such a motion.”
- Cameron v. Cameron, 187 Conn. 163, 170-171, 444 A.2d 915 (1982). “Proof of actual bias is not required for disqualification . . . . The appearance as well as the actuality of impartiality on the part of the trier is an essential ingredient of a fair trial.”
- Dacey v. Connecticut Bar Association., 184 Conn. 21, 27, 441 A.2d 49 (1981). “The relationship clause disqualifies a judge whenever he bears so near a relation to a party to a proceeding before him, as between father and son, brothers or uncle and nephew, by nature or marriage, or landlord and tenant. The specified relationships are not all inclusive; “as” here denotes similitude rather than definition.”

### **WEST KEY NUMBERS:**

- *Judges* # 39-56. Disqualification to act.
- *Appeal and Error* # 185(3). Disqualification of judge
- *Judgement* # 9
- *Venue* # 49

**DIGESTS:**

- ALR DIGEST: *Judges* §§ 14-25
- DONALD H. DOWLING, DIGEST OF CONNECTICUT DECISIONS (1990).  
Judges § 2. Disqualification

**INDEX TERMS:**

- JUDGES, Disqualification

**ENCYCLOPEDIAS:**

- 46 AM. JUR. 2D *Judges* (1994).  
§§ 86-236. Disqualification to act in particular case
- 52 AM. JUR. 2d *Mandamus* (2000).  
§ 319. Disqualification of judge  
§ 320. —Compelling judge to recuse self or certify disqualification  
§ 321. —Automatic disqualification of judge
- 48A C.J.S. *Judges* (1981).  
§§ 98-160. Disqualification to act
- 15 AMERICAN JURISPRUDENCE PL. & PRACT. *Judges* (1997).  
Disqualification and disability (§§ 3 to 67)
- *Disqualification Of Trial Judge For Cause*, 50 AM JUR PROOF OF FACTS 3d 449 (1999).  
§ 5. Mandatory recusal  
§ 6. —Personal interest in litigation  
§ 7. —Financial interest  
§ 8. —Familial relationship  
§ 9. —Prior association with case  
§ 10. —Former law clerk  
§ 11. —Judge as material witness  
§ 17. Exclusions  
§§ 18—25. Procedures for disqualification  
§§ 26-29. Tactical considerations  
§§ 30-32. Elements of proof  
§§ 33-42. Model correspondence, motions and discovery  
§§ 43-65. Proof that judge should be disqualified
- See [Table 1: ALR Annotations on Recusal](#)
- Carolyn Kelly MacWilliam, *Annotation, Disqualification Of Judge From Having Decided Different Case Against Litigant—State Cases*, 85 ALR5th 547 (2001).
- Marjorie A. Caner, *Annotation, Disqualification Of Judge As Affecting Validity Of Decision In Which Other Nondisqualified Judges Participated*, 29 ALR5th 722 (1995).
- *Annotation, Affidavit Or Motion For Disqualification Of Judge As Contempt*, 70 ALR3d 797 (1976).
- *Annotation, Propriety And Prejudicial Effect Of Suggestion Or Comments By Judge As To Compromise Or Settlement Of Civil Case*, 6 ALR3d 1457 (1966).

**TEXTS & TREATISES:**

- JEFFREY M. SHAMAN ET AL. JUDICIAL CONDUCT AND ETHICS (3rd ed. 2000).  
Chapter 4. Disqualification and conflict of interest  
§ 4.01. Introduction  
§ 4.02. Canon 3E of the Code of Judicial Conduct  
§ 4.03. The rule of necessity  
§ 4.09. —Contempt proceedings  
§ 4.10. —Prior knowledge of the facts  
§ 4.11. Family relationships—Relative as party  
§ 4.12. —Relative as an attorney  
§ 4.13. Judge or relative as a witness

- § 4.14. Judge as party
- § 4.15. Social relationships
- § 4.16. Professional relationships—Prior service as attorney in the matter
- § 4.17. —Previous association with attorney
- § 4.18. —Judge’s attorney appears before the judge
- § 4.19. Business relationship
- § 4.20. Financial and other interests
- § 4.21. —Ownership of a financial interest
- § 4.22. —Interest in a party
- § 4.23. —Interest in the subject matter in controversy
- § 4.24. —Any other interest
- § 4.25. Other instances of disqualification
- § 4.26. Waiver and remittal of disqualification

- 1 WESLEY HORTON AND KIMBERLY A. KNOX, CONNECTICUT PRACTICE. PRACTICE BOOK ANNOTATED (1998).  
*Authors’ Comments* following Canon 3, pp. 132-135.
- RICHARD E. FLAMM, JUDICIAL DISQUALIFICATION: RECUSAL AND DISQUALIFICATION OF JUDGES (1996). [Available at the Hartford, New Haven and Stamford Law Libraries].
- DAVID M. ROTHMAN, CALIFORNIA JUDICIAL CONDUCT HANDBOOK (1999). [Available at the Law Libraries of Bridgeport, Hartford, New Haven, Stamford and Waterbury.]

Chapter 7: Disqualification

§§ 7.20 – 7.27. Grounds for disqualification

§§ 7.30 – 7.63. Common disqualification problems

Relations with those before the court

§ 7.30. Financial relationships generally

§ 7.31. Financial interest in a party

§ 7.32. Doing business with attorneys or parties

§ 7.33. Relationships with financial institutions

§ 7.34. Relationships with insurance companies

§ 7.35. Judge’s future career opportunities

§ 7.36. Judge as a party or witness

§§ 7.37-7.44. Relationships of judge as an attorney or with attorneys

Activities or involvement in proceedings of those whom judge has relationship

§ 7.45. Spouse

§ 7.46. Family members

§ 7.50. Romantic involvement

§ 7.51. Social friendships

§ 7.52. Other judges and staff members

§ 7.53. Public officials

§ 7.54. Other relationships

Out-of-court activities, § 7.57

Expressing opinions, § 7.58

Personal knowledge and ex parte contacts, § 7.59

Attacks on the judge by participants in pending proceeding, § 7.60

§§ 7.70 – 7.72. Avoiding disqualification problems

- LESLIE W. ABRAMSON, JUDICIAL DISQUALIFICATION UNDER CANON 3C OF THE CODE OF JUDICIAL CONDUCT (1986). [Available at the New Haven Law

Library].

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**Table 1 Rule of Necessity**

<i>Rule of Necessity</i>	
Betensky v. Opcon Associates, Inc., No. 421034 (Apr. 15, 1999), 24 CONN. L. RPTR. No. 10, 327, 329 (June 21, 1999).	“Given the fact that courts have an institutional obligation to hear and decide the cases brought before them, the common law long ago created what is referred to in judicial disqualification cases as the Rule of Necessity. <b>Stated succinctly, the Rule of Necessity is that if everyone is disqualified, no one is disqualified.</b> Thus, in a judicial salary case, where all judges by definition have an interest in the outcome of the case, the judge assigned the case has a duty to hear and decide the case, however disagreeable that task might be. <u>United States v. Will</u> , 449 U.S. 200, 213-16 (1980). This rule is grounded in '[t]he concept of the absolute duty of judges to hear and decide cases within their jurisdiction.' Id. at 215.” (emphasis added).
Dacey v. Connecticut Bar Association., 184 Conn. 21, 23-24, 441 A.2d 49 (1981).	“While there is language in Dacey I concerning the non-disqualifying effect of either a pecuniary interest which is de minimis or mere membership in a state bar association, to the extent that a discussion of these issues was unnecessary to the holding in the case the language is mere dictum. <i>Diamond National Corporation v. Dwelle</i> , 164 Conn. 540, 544, 325 A.2d 259 (1973). The law of the case principle applies only to those matters essential to the appellate court's determination, not to mere dictum. <i>Barney v. Winona &amp; St. Peter R.R. Co.</i> , 117 U.S. 228, 231, 6 S.Ct. 654, 29 L.Ed. 858 (1886); 5 Am.Jur.2d, Appeal and Error 753. The Dacey I court having determined the disqualification issue on the basis of necessity, the additional discussion was merely passing commentary. The <b>rule of necessity</b> would still obtain whatever the extent of the pecuniary interest of the individual justices and whether or not membership in a state bar association was a disqualifying element in every case where the association was a party. Because at the second trial other judges who were not members of the state bar association could have been assigned to the trial of the case there was no compelling reason for a bar association member to preside. In these circumstances, in addressing the disqualification issue on this appeal, we write on a clean slate.” [emphasis added].

**Table 2 Statutory Disqualification**

<h1>Statutory Disqualification</h1>	
<p><u>Dacey v. Connecticut Bar Assn.</u>, 184 Conn. 21, 26-28, 441 A.2d 49 (1981)</p>	<p>Section 51-39 disqualifies a judge both for relationship and for interest. If the judge comes within the statutory criteria, the disqualification is mandatory. The objective of the statute is to assure that the person who participates in any judicial proceeding in a judicial capacity is disinterested. <u>Groton and Ledyard v. Hurlburt</u>, 22 Conn. 178, 191 (1852). The relationship clause disqualifies a judge whenever he bears so near a relation to a party to a proceeding before him, as between father and son, brothers or uncle and nephew, by nature or marriage, or landlord and tenant. The specified relationships are not all inclusive; "as" here denotes similitude rather than definition. Cf. <u>Morgan Bond Co. v. Stephens</u>, 181 Okla. 419, 421, 74 P.2d 361 (1937); <u>Bolton's Estate</u>, 13 Phila. 340, 346 (1880) (Penrose, J., dissenting).</p> <p>An examination of some of the relationships which are not included in 51-39 but which are disqualifying nonetheless makes it clear that the statutory list is illustrative rather than exhaustive. Husband and wife are not specified in the statute but no one would seriously argue a judge's disqualification where his spouse was a party. Nor could it be contended that those relationships such as master and servant and attorney and client, which would conclusively disqualify a prospective juror; <u>McCarten v. Connecticut Co.</u>, 103 Conn. 537, 542, 131 A. 505 (1925); would not also disqualify the judge. "It is a well-recognized principle of natural justice that a man ought not to be a judge in his own case. Irrespective of any proof of bias or prejudice, the law presumes that a party to a dispute is not disinterested and does not possess the impartiality so essential to proper judicial action regarding it. This absolute disqualification to act rests on sound public policy. Any other rule is repugnant to a proper sense of justice." <u>Ellis v. Emhart Mfg. Co.</u>, 150 Conn. 501, 505-506, 191 A.2d 546 (1963).</p> <p>With respect to corporations, the relationship of a stockholder to a private corporation is such that a judge who owns stock in a corporation appearing before him is disqualified to act. <u>Windham Cotton Man'g Co. v. H., P. &amp; F.R.R. Co.</u>, 23 Conn. 373, 384, (1854). A judge who stands within the prohibited degrees of relationship to a stockholder is also disqualified. <u>Wood v. Hartford Fire Ins. Co.</u>, 13 Conn. 202, 211 (1839). In the case of public corporations such as towns we have held that a judge, as a town taxpayer, was disqualified to act in a case in which the town was a party. <u>Hawley v. Baldwin</u>, 19 Conn. 585, 590 (1849). This disqualification was removed by the legislature in 1863. Public Acts 1863, c. 36. We have also held that for some purposes members of ecclesiastical corporations are to be treated no differently than inhabitants of towns. <u>Atwater v. Woodbridge</u>, 6 Conn. 223, 228-29 (1826), overruled on other grounds in <u>Lord v. Litchfield</u>, 36 Conn. 116, 130 (1869). When the disqualification statute was amended in 1871 with reference to ecclesiastical corporations, it retained disqualification in cases where the corporation is a party. Public Acts 1871, c. 52. For the purpose of disqualification membership in a non-stock corporation should be treated no differently than membership in an ecclesiastical corporation. In short, when applying 51-39 we treat stock and non-stock corporations alike. In both cases we look under the corporate carapace and view the stockholders or members as the real parties in interest.</p>



# Disqualification for Bias or Prejudice

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*A Guide to Resources in the Law Library*

**SCOPE:**

- Bibliographic resources relating to bias or prejudice as the basis for disqualification of judicial authority

**DEFINITION:**

- “(1) A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
  - (A) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
  - (B) the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it . . . .” CODE OF JUDICIAL CONDUCT, Canon 3C(1).
- **Extrajudicial Source Rule:** “The alleged bias and prejudice must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.” *United States v. Grinnell Corp.*, 384 U.S. 563, 583, 86 S.Ct. 1698, 16 L.Ed.2d 778 (1966).
- “It is a well settled general rule that courts will not review a claim of judicial bias on appeal unless that claim was properly presented to the trial court via a motion for disqualification or a motion for mistrial.” *Gillis v. Gillis*, 214 Conn. 336, 343, 572 A.2d 323 (1990).

**COURT RULES:**

- CONN. PRACTICE BOOK (2004 ed.).
  - § 1-22. Disqualification of judicial authority
  - § 1-23. Motion for disqualification of judicial authority

**CODE OF JUDICIAL CONDUCT:**

- CONN. PRACTICE BOOK (2004 ed.).
  - Canon 3. A judge should perform the duties of judicial office impartially and diligently
  - (c). Disqualification

**FORMS:**

- 15 AMERICAN JURISPRUDENCE PL. & PRACT. *Judges* (1997).
  - Disqualification and disability (§§ 3 to 67)

- § 7. Motion—To disqualify judge—General form
- § 10. Response—To motion for disqualification of judge for bias, or prejudice—By opposing party
- § 17. Motion—To disqualify judge—Prejudice of judge and undue influence of adverse party
- § 18. Motion and notice—Disqualification of judge—Personal bias or prejudice
- § 19. Motion—To disqualify judge—Dissolution of marriage  
Motion—To disqualify judge—Bias in custody matter
- § 20. Affidavit—To disqualify judge for prejudice—General form
- § 21. Affidavit—In support of motion to disqualify judge for personal bias or prejudice
- § 22. Affidavit—In support of motion to disqualify judge for personal bias or prejudice—With certificate of counsel
- 50 AM JUR PROOF OF FACTS 3d 449 (1999).
  - § 35. Sample letter to judge
  - § 39. Motion for disqualification for cause (discretionary grounds)
- 8B AMERICAN JURISPRUDENCE PL. & PRACT. *Divorce and Separation* (1996).
  - § 451. Motion—Child custody—Disqualification of judge on grounds of bias

#### **WEST KEY NUMBERS:**

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- *Appeal and Error* # 185(3). Disqualification of judge
- *Judgement* # 9
- *Venue* # 49

#### **DIGESTS:**

- ALR DIGEST: *Judges* §§ 14-25
- DONALD H. DOWLING, DIGEST OF CONNECTICUT DECISIONS (1990).  
Judges § 2. Disqualification

#### **COURT CASES**

- L & R Realty v. Connecticut National Bank, 53 Conn. App. 524, 544, 732 A.2d 181 (1999). “Here, the LeFoll parties twice informed the trial judge that they had no objection to his presiding at trial. The parties were represented by counsel and LeFoll, who is himself an attorney, was present in the courtroom when the trial judge made his disclosure. Once they waive their right to disqualify the trial judge, the parties are bound by their waiver. See General Statutes § 51-39. The trial judge, therefore, did not improperly fail to recuse himself.”
- Joyner v. Commissioner Of Correction, 55 Conn. App. 602, 608, 740 A.2d 424 (1999). “Any factual disputes involved in a claim of judicial bias may require an evidentiary hearing and, if so, it should be conducted before another judge.”
- Abington Limited Partnership v. Heublein, 246 Conn. 815, 820, 717 A.2d 1232 (1998). “We use an objective rather than a subjective standard in deciding whether there has been a violation of canon 3 (c) (1). ‘Any conduct that would lead a reasonable [person] knowing all the circumstances to the conclusion that the judge’s impartiality might reasonably be questioned is a basis for the judge’s disqualification. Thus, an impropriety or the appearance of impropriety . . . that would reasonably lead one to question the judge’s impartiality in a given proceeding clearly falls within the scope of the general standard. . . . The question is not whether the judge is impartial in fact. It is simply

whether another, not knowing whether or not the judge is actually impartial, might reasonably question his . . . impartiality, on the basis of all of the circumstances. . . .’ (Citations omitted; internal quotation marks omitted.) Papa v. New Haven Federation of Teachers, 186 Conn. 725, 745-46, 444 A.2d 196 (1982); Dubaldo v. Dubaldo, 14 Conn. App. 645, 649, 542 A.2d 750 (1988).”

- Churchill v. Alessio, 51 Conn. App. 24, 38, 719 A.2d 913 (1998). “A party’s failure to raise a claim of disqualification has been characterized as the functional equivalent of consenting to the judge’s presence at trial.”
- Felix v. Hall-Brooke Sanitarium, 140 Conn. 496, 501, 101 A.2d 500 (1953). “No more elementary statement concerning the judiciary can be made than that the conduct of the trial judge must be characterized by the highest degree of impartiality. If he departs from this standard, he casts serious reflection upon the system of which he is a part.”

#### **ENCYCLOPEDIAS:**

- 46 AM. JUR. 2D *Judges* (1994).
  - §§ 146-171. Bias or prejudice
    - § 150. Origin of bias; requirement that bias be extrajudicial
    - § 151 —Requirement that bias be personal
    - § 155. Effect of bring action against judge
    - § 157. Bias against attorney for party
    - § 161. Judge’s impartiality might reasonable be questioned
    - § 165. Judge’s past background and experiences
    - § 169. Ex parte communications
    - § 171. Managing trial; questioning witnesses
- 48A C.J.S. *Judges* (1981).
  - §§ 98-160. Disqualification to act
    - § 108. Bias or prejudice
    - § 109. —Nature or character
    - § 110. — —Origin of bias or prejudice and against whom directed
    - § 111. —Particular application of rule
    - § 112. — —Contempt proceedings
- 15 AMERICAN JURISPRUDENCE PL. & PRACT. *Judges* (1997).
  - Disqualification and disability (§§ 3 to 67)
    - § 16. Bias and prejudice. Introductory comments
- *Disqualification Of Trial Judge For Cause*, 50 AM JUR PROOF OF FACTS 3d 449 (1999).
  - § 12. Discretionary grounds
  - § 13. —Personal bias
  - § 14. —Appearance of bias
  - § 15. —Animosity toward counsel
  - § 16. —Extrajudicial Source Rule

#### **TEXTS & TREATISES:**

- JEFFREY M. SHAMAN ET AL. JUDICIAL CONDUCT AND ETHICS (3rd ed. 2000).
  - Chapter 4. Disqualification and conflict of interest
    - § 4.04. Personal bias or prejudice
    - § 4.05. —The extrajudicial source rule
    - § 4.06. —Acts calculated to create bias
    - § 4.07. —Judicial remarks and comments as indicative of bias or prejudice

§ 4.08. —Bias or prejudice toward attorneys

§ 4.09. —Contempt proceedings

§ 4.10. —Prior knowledge of the facts

- 1 WESLEY HORTON AND KIMBERLY A. KNOX, CONNECTICUT PRACTICE. PRACTICE BOOK ANNOTATED (1998).

*Authors' Comments* following Canon 3, pp. 132-135.

- RICHARD E. FLAMM, JUDICIAL DISQUALIFICATION: RECUSAL AND DISQUALIFICATION OF JUDGES (1996). [Available at the Hartford, New Haven and Stamford Law Libraries].

Chapter 4. Disqualification and conflict of interest

- LESLIE W. ABRAMSON, JUDICIAL DISQUALIFICATION UNDER CANON 3C OF THE CODE OF JUDICIAL CONDUCT (1986). [Available at the New Haven Law Library].

- DAVID M. ROTHMAN, CALIFORNIA JUDICIAL CONDUCT HANDBOOK (1999). [Available at the Law Libraries of Bridgeport, Hartford, New Haven, Stamford and Waterbury.]

Chapter 7: Disqualification

Affidavits of prejudice

§ 7.10. Preemptory challenges

§ 7.11. Challenges for cause

§ 7.12. Improper judicial reactions

§ 7.13. Limits on powers of disqualified judge

§§ 7.30 – 7.63. Common disqualification problems

Relationships with those before the court

§ 7.55. Persons against whom judge is biased

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**Table 3 ALR Annotations on Recusal**

<b><i>ALR Annotations on Recusal</i></b>	
Assault or threat made against judge	<ul style="list-style-type: none"> <li>Richard C. Tinney, Annotation, <i>Disqualification Of Judge Because Of Assault Or Threat Against Him By Party Or Person Associated With Party</i>, 25 ALR4th 923 (1983).</li> </ul>
Bias against counsel	<ul style="list-style-type: none"> <li>Carol Schultz Vento, Annotation, <i>Disqualification Of Judge For Bias Against Counsel For Litigant</i>, 54 ALR5th 575 (1997).</li> </ul>
Constitutional law	<ul style="list-style-type: none"> <li>James L. Buchwalter, Annotation, <i>Laws Governing Judicial Recusal Or Disqualification In State Proceedings As Violating Federal Or State Constitution</i>, 91 ALR5th 437 (2001).</li> </ul>
Contempt, punish	<ul style="list-style-type: none"> <li>Russell G. Donaldson, Annotation, <i>Disqualification Of Judge In State Proceedings To Punish Contempt Against Or Involving Himself In Open Court And In His Actual Presence</i>, 37 ALR4th 1004 (1985).</li> <li></li> </ul>
Interests	<ul style="list-style-type: none"> <li>Elaine Marie Tomko-DeLuca, Annotation, <i>Disqualification Of Judge Based On Property-Ownership Interest In Litigation Which Consists Of More Than Mere Ownership Of Stock—State Cases</i>, 56 ALR5th 783 (1998).</li> <li>Herbert B. Chermside, Annotation, <i>Disqualification Of Judge, Justice Of Peace, Or Similar Judicial Officer For Pecuniary Interest In Fines, Forfeitures, Or Fees Payable By Litigants</i>, 72 ALR3d 375 (1976).</li> <li>Annotation, <i>Disqualification Of Judge Because Of His Or Another's Holding Or Owning Stock In Corporation Involved In Litigation</i>, 25 ALR3d 1331 (1969).</li> </ul>
Legal Associations (previous)	Anne M. Payne, Annotation, <i>Judge's Previous Legal Association With Attorney Connected To Current Case As Warranting Disqualification</i> , 85 ALR4th 700 (1991).
Memberships	<ul style="list-style-type: none"> <li>Dag E. Ytreberg, Annotation, <i>Membership In Fraternal Or Social Club Or Order Affected By A Case As Ground For Disqualification Of Judge</i>, 75 ALR3d 1021 (1977).</li> <li></li> </ul>
Political Associations	<ul style="list-style-type: none"> <li>Jay M. Zitter, Annotation, <i>Disqualification Of Judge Because Of Political Association Or Relation To Attorney In Case</i>, 65 ALR4th 73 (1988).</li> </ul>
Prejudicial remarks	<ul style="list-style-type: none"> <li>Christopher Vaeth, Annotation, <i>Prejudicial Effect Of Trial Judge's Remarks, During Civil Jury Trial, Disparaging Litigants, Witnesses, Or Subject Matter Or Litigation—Modern Cases</i>, 35 ALR5th 1 (1996).</li> </ul>

## ***ALR Annotations on Recusal [cont'd]***

Previous case	<ul style="list-style-type: none"><li>• Carolyn Kelly MacWilliam, Annotation, <i>Disqualification Of Judge For Having Decided Different Case Against Litigant—State Cases</i>, 85 ALR5th 547 (2001).</li><li>• Herbert B. Chermside, Annotation, Disqualification of original trial judge to sit on retrial after reversal of mistrial, 60 ALR3d 176 (1974).</li></ul>
Relation to Attorney in case	<ul style="list-style-type: none"><li>• Jay M. Zitter, Annotation, <i>Disqualification Of Judge Because Of Political Association Or Relation To Attorney In Case</i>, 65 ALR4th 73 (1988).</li></ul>
Witness in the case	<ul style="list-style-type: none"><li>• Annotation, <i>Disqualification Of Judge On Ground Of Being A Witness In The Case</i>, 22 ALR3d 1198 (1968).</li></ul>

# Waiver of Disqualification

*A Guide to Resources in the Law Library*

## **SCOPE:**

- Bibliographic sources relating to the waiver of disqualification

## **DEFINITION:**

- **Waiver:** “is the intentional relinquishment of a known right. It is not necessary that a waiver be made in express terms. It may be inferred from the declarations and conduct of the party if it is reasonable to do so.” *Cutlip v. Connecticut Motor Vehicles Commissioner*, 168 Conn. 94, 96, 357 A.2d 918 (1975).
- “The failure to raise a claim of disqualification with reasonable promptness after learning the ground for such a claim ordinarily constitutes a waiver thereof.” *Henderson v. Department Of Motor Vehicles*, 202 Conn. 453, 462, 521 A.2d 1040 (1987).
- “When any judge or family support magistrate is disqualified to act in any proceeding before him, he may act if the parties thereto consent in open court.” CONN. GEN. STAT. § 51-39(c) (2001).

## **STATUTES:**

- CONN. GEN. STAT. (2003).  
Chapter 872. Judges  
§ 51-39. Disqualification by relationship or interest. Judge or family support magistrate may act with consent of parties.  
Chapter 882. Superior Court  
§ 51-183c. Same judge not to preside at new trial

## **COURT RULES:**

- CONN. PRACTICE BOOK (2004 ed.).  
§ 1-22. Disqualification of judicial authority  
§ 1-23. Motion for disqualification of judicial authority

## **CODE OF JUDICIAL CONDUCT:**

- CONN. PRACTICE BOOK (2004 ed.).  
Canon 3. A judge should perform the duties of judicial office impartially and diligently  
(c). Disqualification

## **FORMS:**

- 15 AMERICAN JURISPRUDENCE PL. & PRACT. *Judges* (1997).  
Disqualification and disability (§§ 3 to 67)  
Waiver of disqualification  
§ 60. Notice—Waiver of judge’s disqualification  
§ 61. Stipulation—Waiver of judge’s disqualification

## **WEST KEY NUMBERS:**

- *Judges* # 39-56. Disqualification to act.
- *Appeal and Error* # 185(3). Disqualification of judge
- *Judgement* # 9

- *Venue* # 49

#### **DIGESTS:**

- ALR DIGEST: *Judges* §§ 14-25
- DONALD H. DOWLING, DIGEST OF CONNECTICUT DECISIONS (1990).  
Judges § 2. Disqualification

#### **COURT CASES**

- *State v. DeGennaro*, 147 Conn. 296, 303, 160 A.2d 480 (1960). “The defendants make the further claim that they could not ‘waive’ the disqualification because waiver is the intentional relinquishment of a known right and it does not affirmatively appear that they or their counsel knew of the disqualification statute (51-41)[now 51-183c]. This claim is apparently taken from similar language in the opinion in *State v. Hartley*, [ 75 Conn. 104, 109, 52 A. 615 (1903)] supra. Section 51-39, however, refers to consent to have the judge hear the case, not waiver of his disqualification to hear the case. That the defendants went far beyond mere consent is not open to question. Whatever may have been the situation when, as at the time of the trial of *State v. Hartley*, the consent statute (Rev. 1888, 841) required the consent to be given in writing, we cannot engraft onto the present consent statute a requirement of knowledge of the disqualification statute which the language of the consent statute does not impose.”

#### **ENCYCLOPEDIAS:**

- 46 AM. JUR. 2D *Judges* (1994).  
Waiver and estoppel  
§ 221. Generally  
§ 222. Statutory availability of waiver and estoppel  
§ 223. Knowledge of and opportunity to exercise right  
§ 224. Effect of waiver on other parties  
§ 225. Manner of effecting waiver or raising estoppel  
§ 226. —Failure to make timely objection  
§ 227. —Waiver by consent of parties  
§ 228. —Particular acts not resulting in waiver
- 48A C.J.S. *Judges* (1981).  
§ 103. Waiver of disqualification  
§ 104. —Acts constituting waiver  
§ 105. — — Participation in proceedings  
§ 106. — — Consent
- 15 AMERICAN JURISPRUDENCE PL. & PRACT. *Judges* (1997).  
§ 59. Waiver of disqualification. Introductory comments
- *Disqualification Of Trial Judge For Cause*, 50 AM JUR PROOF OF FACTS 3d 449 (1999).  
§ 17. Exclusions  
Remittal of disqualification
- See [Table 1: ALR Annotations on Recusal](#)
- Marjorie A. Caner, Annotation, *Disqualification Of Judge As Affecting Validity Of Decision In Which Other Nondisqualified Judges Participated*, 29 ALR5th 722 (1995).

#### **TEXTS & TREATISES:**

- RICHARD E. FLAMM, JUDICIAL DISQUALIFICATION: RECUSAL AND DISQUALIFICATION OF JUDGES (1996). [Available at the Hartford, New Haven and Stamford Law Libraries].  
Chapter 4. Disqualification and conflict of interest  
§ 4.26. Waiver and remittal of disqualification



- DAVID M. ROTHMAN, CALIFORNIA JUDICIAL CONDUCT HANDBOOK (1999). [Available at the Law Libraries of Bridgeport, Hartford, New Haven, Stamford and Waterbury.]

Chapter 7: Disqualification

Waiver of disqualification

§ 7.25. Judge may not induce waiver

§ 7.26. Form and content of the written waiver of  
disqualification

§ 7.27. Effect of change in disqualifying circumstances

**COMPILER:**

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**Table 4 Unreported Connecticut Decisions on Recusal**

<b><i>Unreported Connecticut Decisions on Recusal</i></b>	
<u>Haus v. Associates in Family Health</u> , No. CV01-0512495 (May 2, 2003).	“In our view, it would not be reasonable for a person to question a judge's impartiality in a trial for a serious crime committed by a member of a particular racial group simply because the judge's close relative was the victim of a similar crime committed by a member of the same racial group. Such a perception, if held, would be based on speculation, and not on any reasonable basis.”
<u>Hayes v. Yale-New Haven</u> , No. CV 96 0393656 S (Jun. 26, 2002).	“As a matter of law, the plaintiff has not alleged facts that would support disqualification under General Statutes § 51-39 because the plaintiff has not and cannot allege that the trial judge had a blood relationship to any party to the case or a pecuniary interest in the outcome. At a hearing held before this court, the plaintiff produced no documentary evidence of any pecuniary interest in the outcome of the case by the trial judge, nor did the plaintiff raise any credible possibility of a pecuniary interest.”
<u>Raymond v. Freedom of Information Comm.</u> , No. CV98-0492641S (Jun. 6, 2002).	“This court does not understand the applicability of this provision [Practice Book § 1-22(a)] to this case. The appellate court majority did not grant a new trial or reverse the judgment, even on the attorney's fees issue. Rather than order a new trial or reverse the judgment, the majority repeatedly stated that it was remanding the case for further articulation. There does not appear to be a reason to assign this case to a different judge.”
<u>Honan v. Dimyan</u> , No. CV 00-033 82 02 S (Nov. 6, 2001) 2001 Ct. Sup. 15086, 2001 WL 1479114, 2001 Conn. Super. LEXIS 3216.	“The proper procedure to disqualify a judge is set out in Practice Book § 1-23 which provide that “[a] motion to disqualify a judicial authority shall be in writing and shall be accompanied by an affidavit setting forth the facts relied upon to show the grounds for disqualification and a certificate of the counsel of record that the motion is made in good faith. The motion shall be filed no less than ten days before the time the case is called for trial or hearing, unless good cause is shown for failure to file within such time.” Further, “[t]he matter of a judge's recusal is in the reasonable discretion of that judge. . . . The decision to recuse oneself is an intrinsic part of the independence of a judge.” <u>Consiglio v. Consiglio</u> , 48 Conn. App. 654, 661-662 (1998). Therefore, the plaintiffs must follow the procedure outlined in Practice Book § 1-23 and make their motion to disqualify Judge Axelrod in front of him if and when he presides over any aspect of the present case. This court cannot and will not violate the independence of another Judge of the Superior Court by enjoining him from hearing this case.”
<u>Hackling v. Casbro Construction, Rhode Island</u> , No. 368552 (Feb. 28, 2000) 2000 Ct. Sup. 2766, 2000 WL 278756, 2000 Conn. Super. 617.	<p>“‘A motion to disqualify a judicial officer because of the claimed possibility of bias is a serious matter. If counsel makes such a motion, it is not asking too much to require that he or she follow the established rules that treat it as such.’ <u>State v. Santangelo</u>, supra, 205 Conn. [578,]601[,534 A.2d 1175 (1987)]; see also <u>Weyel v. Catania</u>, 52 Conn. App. 292, 298, 728 A.2d 512, cert. denied, 248 Conn. 922, 733 A.2d 846 (1999). Here, the plaintiff's motion is not accompanied by the required affidavit or certificate.</p> <p>Second, the motion is untimely. Although the plaintiff was not required to comply with that portion of Practice Book § 1-23 that requires that a motion for recusal be ‘filed no less than ten days before the time the case is called for trial or hearing’</p>

	<p>because ‘good cause is shown for failure to file within such time,’ such a motion still ‘must be asserted seasonably or it will be deemed to have been waived.’ <u>Cameron v. Cameron</u>, 187 Conn. 163, 168, 444 A.2d 915 (1982). ‘The rationale for this rule is that parties cannot be allowed to anticipate a favorable decision, reserving a right to impeach it or set it aside if it happens to be against them, for a cause which was well known to them before or during the trial.’ (Internal quotation marks omitted.) <u>Barca v. Barca</u>, 15 Conn. App. 604, 608, 546 A.2d 887, cert. denied, 209 Conn. 824, 552 A.2d 430 (1988). Where a party or his attorney is aware of what he considers grounds for recusal before judgment but waits until after judgment to move for recusal, the motion is untimely. <u>Jazlowiecki v. Cyr</u>, 4 Conn. App. 76, 78-79, 492 A.2d 516 (1985).”</p>
<p><u>Burton v. Dimyan</u>, No. CV94-0318006 S (Jan. 28, 2000) 2000 Ct. Sup. 1216, 2000 WL 175766, 2000 Conn. Super. LEXIS 259.</p>	<p>“Although each case of alleged judicial impropriety must be evaluated on its own facts, the considerations that we have found decisive are similar to those articulated in cases in other jurisdictions. Some of the significant state court cases are reviewed in <u>In re Inquiry Concerning a Judge</u>, supra, 788 P.2d [716,] 722-23 [(Alaska 1990)]. At least since the decision of the United States Supreme Court in <u>Liljeberg v. Health Services Acquisition Corp.</u>, supra, 486 U.S. [847,] 860-61, [108 S. Ct. 2194, 100 L.Ed. 2d 855 (1988)] federal courts have ruled to the same effect. See, e.g., <u>United States v. Jordan</u>, supra, 49 F.3d [152,] 156-57 [(5th Cir. 1995)].”</p>